



**In the Matter of:**

**RRL PHILLIPS,**

**ARB CASE NO. 03-050**

**COMPLAINANT,**

**ALJ CASE NO. 2001-STA-20**

**v.**

**DATE: April 30, 2004**

**CASCADE COLUMBIA  
DISTRIBUTION COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**RRL Phillips, *pro se*, Hillsborough, Oregon**

*For the Respondent:*

**Karen M. Vickers, Esq., Bullivant, Houser & Baily, PC, Portland, Oregon**

### **FINAL DECISION AND ORDER**

This case arises under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 1997), and the implementing regulations at 29 C.F.R. Part 1978 (2003). On September 18, 2002, RRL Phillips filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Cascade Columbia Distribution Company (CCDC) terminated his employment for making complaints protected by the STAA.

Following an investigation, OSHA dismissed the complaint as lacking merit. Phillips requested a hearing before an Administrative Law Judge (ALJ), which the ALJ held on May 6 and 7, 2002. Following that hearing, the ALJ issued a Recommended Decision and Order (R. D. & O.) concluding that CCDC terminated Phillips's employment because of Phillips's insubordinate conduct, and that his complaints relating to violations of commercial motor vehicle safety requirements did not contribute to

CCDC's action. R. D. & O. at 8-9. Accordingly, the ALJ recommended denial of the complaint. We affirm the ALJ's ruling.

### **BACKGROUND<sup>1</sup>**

In 1997, CCDC hired Phillips as a full time truck driver. During his employment with CCDC, Phillips complained to the company's supervisory personnel about mechanical defects in CCDC's vehicles, cargo violations (including overweight loads and improper packaging of flammable materials), a meeting he believed was an illegal safety meeting, and scheduling decisions that he believed violated United States Department of Transportation regulations. Hearing Transcript (Tr.) at 42, 79, 102-06, 110, 115, 121-22.<sup>2</sup>

On September 8, 2000, CCDC branch manager Joe Price called Phillips into a meeting, showed him a document titled "INCIDENT OF STOCK TRANSFER TRUCK TRIP ON AUG. 15, 2000," and asked him if it was accurate. After reading the document, Phillips told Price that it "was true." Respondent's Exhibit (RX) 106, Tr. at 60-61, 117, 144-45. Price then gave Phillips a reprimand placing him on probation for a six-month period. RX 106, Tr. at 74-75. The document recounted Phillips's August 15, 2000 decision, contrary to company instructions, to re-load cargo onto a truck found to be overweight during a highway truck scale stop. It stated that Phillips's truck had been found to be 3000 pounds overweight; that a company official responded by sending another employee with a tractor-trailer to unload enough weight to make Phillips "legal to continue his trip;" that Phillips and the other employee unloaded cargo onto the second tractor-trailer; that Phillips instructed the other driver to meet him at the next exit where they reloaded the cargo onto Phillips's truck; that Phillips made the decision to reload without discussion with company officials or company approval; and that "the instructions were for product other than the CH2O order to be taken off the truck and returned to the Sherwood warehouse." RX 106.

As the meeting progressed, Phillips attempted to discuss matters unrelated to the August 15, 2000 incident, became upset, and verbally abused Price. Tr. at 163, 183. Because of Phillips's behavior, Price ended the meeting. Tr. at 183. Phillips later confronted Price in the dock area to discuss a problem with one of CCDC's trailers. Price told Phillips that the problem was being addressed. He also told Phillips to clock

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<sup>1</sup> The ALJ's decision contains a detailed summary of the testimony adduced at the hearing. R. D. & O. at 2-7.

<sup>2</sup> On July 19, 2000, Phillips complained to the Oregon Bureau of Labor and Industries that CCDC was discriminating against him because of his safety complaints and a civil rights issue. Tr. at 120. There is no evidence that CCDC was aware of this complaint prior to Phillips's firing. Price, the company official who fired Phillips, testified that he was unaware of this complaint until May 6, 2002, and that he had no reason to believe that the company's owners who made the termination decision might have known about this complaint. Tr. at 188. Phillips testified that he had no independent knowledge that anyone at CCDC was aware of this complaint at any time during his employment at CCDC. Tr. at 140-41.

out because he was agitated. Tr. at 61, 165. Price left the dock area and Phillips followed him into an office. Phillips “proceeded to sit down in the chair and verbally kind of rant and rave in a tirade in the office when [CCDC has] phones and customers placing orders.” Tr. at 165. Price told Phillips to leave because he was being disruptive, but Phillips refused to do so. Price then informed him that if he did not leave, Price would call the local police department. Tr. at 165. Phillips still refused to leave. Price contacted the police, who arrived a few minutes later and asked Phillips to leave. Tr. at 146, 165. Phillips left the office, whereupon Price contacted Bob Code, one of the owners of CCDC, and reported what had occurred. According to Price, Code called Price back, and told him that he and his brother Jim, a CCDC co-owner, had decided, “based on Phillips’s reaction and his disobedience to what he was asked to do,” that Price would call Phillips on Saturday and terminate his employment. Price called Phillips the next day and told him that he was fired. Tr. at 62, 166.

### **JURISDICTION AND STANDARD OF REVIEW**

Pursuant to 29 C.F.R. § 1978.109(a), (b) (2003), the ALJ forwarded the case to this Board for review. Both parties have filed briefs for the Board’s consideration. See 29 C.F.R. § 1978.109(c)(2). We have jurisdiction to decide this case pursuant to 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1). See Secretary’s Order No. 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002).

Under the STAA, the Board is bound by the ALJ’s factual findings if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Trans Inc. v. United States Dep’t of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995). Substantial evidence is that which is “more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clean Harbors Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

In reviewing the ALJ’s conclusions of law, the Board, as the Secretary’s designee, acts with “all the powers [the Secretary] would have in making an initial decision . . .” 5 U.S.C.A. § 557(b) (West 1996). See also 29 C.F.R. § 1978.109(c) (providing for issuance of a final decision and order by the Board). Therefore, the Board reviews the ALJ’s conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

### **DISCUSSION**

The STAA protects an employee who makes complaints relating to violations of commercial motor vehicle safety requirements from employer retaliation affecting his pay, terms, or privileges of employment. 49 U.S.C.A. § 31105(a)(1)(A).<sup>3</sup> To prevail,

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<sup>3</sup> “A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because ... the employee, or

Phillips must prove by a preponderance of the evidence that CCDC took adverse action because of his protected activity. *Sosnoskie v. Emery, Inc.*, ARB No. 02-010, ALJ No. 2002-STA-21 (ARB Aug. 28, 2003), citing *Metheany v. Roadway Package Sys., Inc.*, ARB No. 00-063, ALJ No. 2000-STA-11, slip op. at 7-8 (ARB Sept. 30, 2002), *BSP Trans, Inc.*, 160 F.3d at 46 (1st Cir. 1998), *Yellow Freight Sys., Inc. v. Reich*, 27 F.3d 1133, 1138 (6th Cir. 1994), *Mason v. Potters Express, Inc.*, ARB No. 00-004, ALJ No. 99-STA-27, slip op at 3 (ARB Nov. 27, 2000). He has failed to do so.

Substantial record evidence supports the ALJ's determination that CCDC fired Phillips because of Phillips's insubordinate conduct. Price testified that: (1) Phillips received a reprimand because he performed an illegal act on August 15, 2000, acting contrary to company instructions; (2) he was not considering terminating Phillips's employment when he prepared the reprimand document; (3) he and the Code brothers discussed the incidents of September 8 and Phillips's reaction to the reprimand but did not discuss Phillips's safety-related complaints; and (4) it was Phillips's reaction to the reprimand, including his refusal to leave the company's premises after being ordered to do so, which caused the termination decision. Phillips admitted: (1) he confirmed to Price that the account of events in the reprimand document was true; (2) he became furious during the September 8 meeting; (3) he followed Price and refused to leave after Price ordered him to do so; and (4) he persisted in remaining on the CCDC premises until some time after the police arrived. Tr. at 60, 117, 145-46, 165, 177, 184-186, 196. Consequently, Phillips failed to carry his burden of proving by a preponderance of the evidence that CCDC terminated his employment because he engaged in protected activity.

#### CONCLUSION

Phillips has not proven by a preponderance of the evidence that CCDC terminated his employment because he made complaints protected by the STAA. We therefore **DISMISS** his complaint.

**SO ORDERED.**

**JUDITH S. BOGGS**  
**Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding . . ."